Conley's Whole Testimony Will Be Allowed to Stay in Record of Frank Case

State Ready With Corroborating Witnesses, if Evidence Is Held to Be Admissible—Jim Conley Adds New and Sensational Feature to His Testimony, Declaring He Saw Frank Place Mary Phagan's Pocketbook in the Factory Safe

SOLICITOR DORSEY APPLAUDED IN COURT WHEN SUSTAINED BY RECORDS AFTER DISPUTE WITH ROSSER

Those Responsible for Applause Were Immediately Ejected From the Court Room—Dr. H. F. Harris Expected to Resume Stand During Afternoon—State Will Furnish Presentation of Its Case by Thursday but Hardly Before

Judge L. S. Roan, presiding at the trial of Leo M. Frank, superintendent of the National Pencil factory, who is on trial charged with the murder of Mary Phagan, Wednesday afternoon reversed himself in his ruling made Tuesday striking out portions of Jim Conley's testimony. The judge made his ruling Tuesday but withheld announcing it to the jury until Wednesday. His reversal means that Conley's testimony that he acted in the capacity of a "lookout" for the accused superintendent on days prior to the day of the tragedy, and also his testimony accusing Frank of perversion remains in the testimony. It also means that Solicitor Dorsey will be allowed to present evidence corroborating the negro sweeper as to Frank's attitude toward him and his conduct to the negro's presence.

CONLEY ADDS NEW SENSATION.

Jim Conley, who left the witness stand at 11:10, after sixteen hours of direct and cross examination, added sensational feature to his testimony Wednesday by the declaration that he saw Frank take the mesh bag or pocket book carried by Mary Phagan from the desk in his office and placed it in the safe. So far as the public knows the mesh bag has never been found.

Over the protest of the attorneys for the defense, Solicitor Dorsey managed to get before the jury that Frank had refused to face his accuser, Jim Conley, when the detectives sought to arrange an interview at the tower.

For the first time since the trial has been in progress applause broke out in the court room when Solicitor Dorsey after a dispute with counsel for the defense over testimony given by Detective Scott, was sustained by the reading of the court stenographic notes. Dorsey had contended that Scott testified that Frank told him on April 28th about Mrs. White's having seen a negro near the foot of the stairs on the day of the tragedy. Although the defendant had given this information to the Pinkerton detectives on April 28 declared the solicitor, it was May 7 before the state's detectives knew about it. When the stenographer's report of Scott's testimony was read, sustaining the solicitor, applause broke forth in several parts of the court room at once. Those responsible for it were immediately ejected by the deputie [sic].

Dr. H. F. Harris is expected to take the stand Wednesday afternoon and finish his testimony. He will probably be under cross-examination for an hour or more. The state expects to finish the presentation of its case Thursday.

LARGE CROWD PRESENT.

Hardly half of the crowd that was waiting in the long line when the court room doors were opened Wednesday morning, could gain admittance, the limited seating capacity being filled at once.

Leo M. Frank, the accused, breakfasted with his wife and mother in an anteroom of the court. It was stated that the defendant had slept well overnight.

All was ready for court to convene several minutes in advance of 9 o'clock, the scheduled hour.

Before the jury entered, Mr. Rosser told the court that both sides had come prepared to discuss the question of ruling out certain portions of Conley's testimony. Judge Roan stated that he would

hear that discussion at 2 o'clock. He did not care to hear it at the morning session.

"Your honor, we have some witnesses whom we want to put on the stand following Conley," objected the solicitor.

Attorneys interpreted Judge Roan's remarks on this to be that he would allow the corroborative testimony to proceed if it was at hand, and then would announce later his ruling on its admissibility after he had heard arguments at 2 o'clock.

CONLEY RESUMES STAND.

The jury was called in and the cross-examination of James Conley, the negro accuser of Frank, resumed with Mr. Rosser conducting it.

Attorney Rosser made a demand on Solicitor Dorsey for the original of Conley's second affidavit. The solicitor was unable to furnish the original. Chief Lanford never had given it to him, he said, and he doubted the existence of a signed statement. Detective Starnes said he didn't think Conley signed that affidavit, although it was taken in the negro's words by a shorthand reporter.

Attorney Rosser read from an unsigned copy of the original statement, with the permission of the solicitor. Both sides finally agreeing that this copy should be taken as the original. This statement was made by Conley to the police on May 26.

In it Conley said he arose between 9 and 9:30 o'clock on the day of the murder. He remembered the time because after he got up he went outside to get some water and looked at the clock on the Atlanta university. The affidavit continued, "This is my second and last statement. In my first statement I said I wrote the notes on Friday so I wouldn't be connected with the murder. I thought that if I said I went there Saturday they would accuse me of knowing about the murder." The affidavit recited Conley's alleged actions that day, which Conley since on the stand has admitted to be wrong recital.

The affidavit did not go into as much detail as Conley's testimony contradicted it in a number of details. Conley himself admitting that he lied. In it he said he bought six beers at various saloons on Peters street on his way to the Capital City laundry; that on his way to the laundry he met Frank at the corner of Nelson and Forsyth streets, and Frank told him to wait until he went to Montag Brothers and then he would go to the factory with him.

Conley's affidavit continued that he waited and then accompanied Frank to the factory. The statement continued to name the various people who entered and left the factory, telling virtually the same story as he does now on the witness stand. The statement told of writing the notes at Frank's dictation, but said nothing about knowing of the actual murder or having helped to conceal the body.

ANOTHER AFFIDAVIT.

Mr. Rosser picked up another affidavit made the following day by Conley, and read that. This document represented the negro as adding to his previous story statements about assisting in the disposal of the body. The story was principally the same as told on the witness stand, but varied in a number of details.

For instance, he said that Frank told him he picked up a girl and let her fall, instead of that Frank told him he had struck a girl too hard, as the negro testified Monday. Another discrepancy was that the negro said he was carrying the girl on his shoulder instead of that she was hanging about his knee in the bagging and that he dropped her deliberately, in order to get Frank to help him.

He ended this affidavit by saying that he had thought Frank was going to get out and help him, but that he then believed Frank was not going to help him and that he had decided to tell the whole truth.

The negro said on the stand, Wednesday, after the statement had been read, that he remembered making it and that it was his statement; that he could not remember its date or its sequence.

"W[a]s this the last statement that they put in writing, Jim?" asked Mr. Rosser.

"I don't know," answered Conley. "I think they were all put in writing except some things that I told the detectives."

Mr. Rosser resumed his cross-examining of the negro.

"On Thursday, May 1, while you were working by Miss Rebecca Carson, didn't […]

SOLICITOR DORSEY IS APPLAUDED WHEN COURT SUSTAINS HIM

[…] she say, ‘they haven't got you yet, Jim?' and didn't you say ‘No, I haven't done anything?' And didn't she say, ‘No, neither has Mr. Frank?' and didn't you say, ‘No, I know Mr. Frank is jut as innocent as you are?'"

DENIES ADMISSIONS.

Conley said that he did not remember the conversation.

"And didn't she say, ‘When they find the murderer, it will be that negro who was sitting by the elevator when Mrs. White went up?' And then didn't you duck your head and leave right quick?"

"No, sir," said the negro.

"Jim, when you were working by Miss Mary, [large section of text illegible]

[…] evidence about this negro having been arrested at all at any time?"

Mr. Rosser remarked something sottovoce to the solicitor.

"I thought so," said Mr. Dorsey, and proceeded.

"Well, Jim, when was the first time you were arrested?"
"When I was a small boy."

"What for?"

FORMER ARRESTS.

"Throwing rocks."

"What were you arrested for the next time?"
"Fighting with some colored boys."

"The next time?"
"I was charged with drinking and disorderly conduct."

"The next time?"

"Fighting with another colored fellow."

"Did you ever fight with a white man, Jim?"
"No, sir."

"Well, what was the cause for these other arrests?"
"Fighting and drinking and disorderly."
"Were you ever in the county jail before this Frank affair came up?"

"No, sir."

"When was it you were put in the county jail?"
"I don't remember."

"Was it before or after you went through the factory and showed how you carried the body?"
"I don't remember that."

"Well, while you were in jail, did you try to see Mr. Frank?"
Mr. Rosser objected. The question said he, was leading and immaterial. Judge Roan held that it was leading, but not immaterial. Mr. Dorsey changed its form.

The negro said that the detectives wanted him to see Frank, but couldn't get him to him. The answer was ruled out.

"When was the last time you saw Frank?"

"That Thursday when he came over to the station house, going up in court."

"Was that before or after you had talked?"
"Before."

"What did he do?"

NEARLY FELL FROM STAND.

"As he passed by my cell, he just looked and bowed and smiled."

The solicitor had the negro point out on the di[a]gram the washstand near the office. As the negro was moving his chair, he nearly fell off the witness stand. The solicitor had him point out also the desks in the office where he claims to have sat and where he says Frank sat when they wrote the notes.

The solicitor asked him to describe Frank's manner while the notes were being written. He said Frank was "trembling and nervous, and rubbing his hands together." The negro squirmed in his seat to illustrate how Frank was nervous. "What did Frank do about a pencil?" asked the solicitor.

"He took the pencil and showed me how to rub out a letter."

"What letter on what word?"
"The ‘s' on negroes."

The negro declared that a person could sit at Frank's desk and look at the stairway leading to the third floor.

The solicitor had him point out on the diagram the place where he claims Frank talked to him on the fourth floor Friday. The negro pointed on the diagram also to the spot where he claims Frank spoke to him Tuesday after the crime and told him to be a good boy.

"How far from the water cooler was it that you dropped the body?" asked the solicitor.

"I don't know, sir, but it was between the dressing room and the water cooler."

FRANK HAD POCKETBOOK?

"Did you ever see Mary Phagan's pocketbook after you came from the basement?"

"Yes, sir, it was on Mr. Frank's desk."

"What became of it?"
"I saw Mr. Frank put it in his safe."

"How long had you been in jail before you wrote for the detectives?"
"Ten or fifteen days."

"After Frank called you and you went back toward the body, did he have time to go down and lock the inner doors before you spoke to him again?"
Answering a question, the negro showed on the diagram where he claims to have been standing when he looked at the clock and saw that the hour was 4 minutes to 1.

The solicitor asked him to describe the character of the screams he heard.

The question was ruled out by the court.

"Who has talked to you longer—Black, Scott, Campbell, myself, or Mr. Rosser here?"

The court held that he could not draw a comparison between conversations inside and outside the court room.

"What is the longest time that all of the detectives and the state's lawyers have talked to you?"

The negro said that he didn't remember, but that once Mr. Scott started talking to him at a quarter to 11 and was not through until dark.

HOW HE LEFT BODY.

"How many sacks were around there where you got that cloth that you wrapped the body up in, or like that gunny sack?" The solicitor pointed to a gunny sack near the witness stand.

"There was some there. I don't know how many."

"Now, Jim, was moving this body a hard job?"

"It was pretty hard for me."

"Show on this diagram where Frank was when he held up his hands and said ‘sh-h-h!"

Conley pointed out to the head of the stairs on the second floor.

"Tell the jury in what position you left the body in the basement."

Conley got down from the chair and lay on the floor in front of the jury. He lay on the left side, with his left arm extended under his body and his right arm almost parallel with his body. His head touched the floor. Conley then illustrated the direction of the head and feet. Illustrating his testimony of Monday on this point.

The solicitor picked up the photograph of the scene which he exhibited to the negro Monday without securing the negro's identification of it.

"Do you recognize this now?"

"Yes, sir, that's where we left the body."

Attorney Rosser jumped to his feet. "So you know what it is now, do you?" he demanded. "How did you find out?"
"Well, I must have looked at it good. I see it now."

"Now tell the jury in detail what you did after you looked at the clock at 4 minutes to 1," directed the solicitor.

ROSSER OBJECTS TO DETAIL.

Attorney Rosser objected on the ground that the detail had been gone into fully. Solicitor Dorsey, addressing the court, contended that he should be allowed to ask the witness questions about this.

"Mr. Rosser," said he, "has asked minutely about the actions of the witness after 4 minutes to 1. This was for the purpose of drawing certain inferences for the purpose of a final argument to the jury. I want the witness to tell this so the jury will understand the matter. Mr. Rosser has drawn his deductions, or has extracted statements from the witness according to his deductions. Now I do not believe it is any more than fair for us to question him along the line of our deductions."

Attorney Rosser: "I want to know a single instance where we have laid any foundations for inference. There ought to be some decency about this rule."

Judge Roan sustained Mr. Rosser.

"Where did Frank wash his hands?"

Conley pointed to the sink indicated on the diagram, behind the elevator on the second floor.

"When did he wash there?"
"I don't know when, except that he washed there when he came back up from the basement."

Solicitor Dorsey picked up the notes found beside the body of Mary Phagan and asked Conley, "Did you write on any other color of paper than this, when you wrote those notes that day?"
"No, sir, no other." said the negro.

"Where do they use this kind of paper, Jim?"

PROMISED CONLEY A TRIP.

"I don't know—I know he had some of it on his desk."

"You said something about green paper, yesterday, didn't you, Jim? Did you write on any green paper?"
"No, sir, the tablet was green."

"What was said by Frank about you going to Brooklyn?"
"He didn't say nothing about my going to Brooklyn. He said if I got caught he would get me out on bond and send me away from here."

"Did you ever have any conversation with this W. H. Mincey?"
"Only one time at the station house, when Mr. Black and some other detective brought him down there."

"Is that the only time you ever saw him?"
"The only time in my life."

CONLEY RECOGNIZES REPORTERS.

"The night you were put in jail, what did you say to these newspaper men?"
Attorney Rosser objected to the question. The solicitor would have to point out the newspaper men, said he.

The solicitor pointed out Harlles Branch and H. W. Ross, Journal reporters, and asked, "What did you say to these two?"
There was objection. The enforcement of the rule was asked by the defense, and the two newspaper men were sent out of court for a moment.

"What did they offer you?" asked the solicitor. [...]

LAWYERS CLASH IN BIG BATTLE OVER TESTIMONY OF JIM CONLEY

"Well, those two there didn't offer me anything."

"What did these two newspaper men talk to you about?"
"I disremember," said the negro. "We stood at the door and talked."

"Did they offer you anything?"

Mr. Rosser objected on the ground that the negro already had said he did not remember anything and that the question was leading. Judge Roan sustained Mr. Rosser.

"During Monday and Tuesday at the factory, were you nervous?"
"No, sir."

"Why?"
Mr. Rosser objected, Judge Roan sustained him.

WHAT HE SAID TO SCHIFF.

"What did you say to Schiff the day the factory closed down?"
"Well," said the negro, "somebody said something about the crowd out in front of the factory after the whistle had blow and I went and looked out of the window and came back into the shipping room and said, "There sure is a crowd." And somebody said, "I wish I had brought my pistol." And I lo[o]ked up and laughed and said, "I wish I was a white man. I'd go out." Mr. Schiff says, "I don't see why you want to be a white man. They've got Mr. Frank locked up."

The negro explained that there were a number of people in the room and that he was not hiding.

"Who could have heard this?" asked Mr. Dorsey.

"Mr. Darley and Mr. Schiff and Mr. Wade Campbell and the negro that worked there."

"Did Darley and Schiff know that you would write?"
The question was ruled out on objection by Mr. Rosser.

"Do you know how to write the word ‘luxury,' the name of a brand of pencil?"
Mr. Rosser objected, but the question was allowed.

"Yes, sir." He had to write on papers and bring them to Frank. He had to do a good deal of writing, and Mr. Frank furnished him with a pad, he said.

ROSSER AGAIN TAKES HIM.

Mr. Rosser cross-examined the negro again.

"Why didn't you tell Black and Scott about the mesh bag?"

"I don't think they asked me."

"When did you first tell any detective about it?"
"I don't remember."

"Did you tell any detectives before you went to jail?"
The negro said he didn't know.

"Why didn't you tell Black and Scott that Frank said he would get you out on bond and get you away if you kept your mouth shut?"
"I did tell them," said Conley. He couldn't remember when.

"You didn't see the handkerchief, did you?"
"I don't think I did."

"Didn't you tell the detectives anything about it?"

"I don't remember."

FRANK PUT PURSE IN SAFE.

"Did you see Mr. Frank put the bag on the safe and lock the safe?"
"I didn't see him turn the knob. He shut the door."

"Did you ever tell Mr. Dorsey about this?"
"Yes, sir. I told him a long time ago, after I left the jail."

"Mr. Dorsey went to see you seven times, four at the station house and three at his office. How long did he stay at any one time?"
The negro couldn't remember, but said that some times at the office he had to wait a long time before Mr. Dorsey could talk to him.

"Did he write down what you were saying?"
The negro said he couldn't remember distinctly, but once there was another man in the office writing. Mr. Dorsey wrote down things when he talked to him at the station house.

"Didn't the detectives give you long sittings on the May 27, 28, 29 and 31? And didn't Dorsey have you for more than four hours on the 31st?"
"He had me until after dark. I don't know how long it was."

"And Dorsey had you again on June 5 and 6; Starnes on June 5 and 6; Starnes on June 15; Campbell on June 26; Dorsey, Campbell and Starnes on July 3; Dorsey and Hooper on July 12; Starnes and Campbell on July 16?"

Conley said he talked to these people at various times but could not recall the dates.

"How long did you look after the pencil boxes at the factory?"

"More than a year."

"All those boxes had names on them, didn't they, showing what kind of pencils were put up in them?"

"Yes, sir."

WOULDN'T KNOW LUXURY.

"You had one box named ‘Luxury,' didn't you?"

"Yes, sir."

"Would you know luxury if you saw it?"
"No, sir."

"You've been writing this and furnishing the writing to Mr. Frank for a whole year, haven't you? You said he knew you could write?"
"Yes, sir."

Mr. Rosser had the negro recount the various brands on the boxes.

"Could you write plain, Jim?"
"I don't know, sir."

"Well, how did you write those lists?"
"I did my best."

"You say one of the boxes was labeled ‘Uncle Remus?'"

"Yes, sir."

SPELLING BEE.

"Spell ‘Uncle Remus.'"

"O-n-e r-i-m-e-s," spelled the negro.

"Now spell luxury for the jury. Spell it like you wrote it on the lists."

"L-u-s-t-r-i-s," spelled the negro, verbally.

"You sent those lists to Frank that way?"
"Yes, sir."

"How did he make out what you meant?"
"He had some trouble with the first ones, but he learned how I wrote the different names."

"He called your attention to the way you misspel[l]ed ‘luxury,' didn't he?"
"Yes, sir."

"You say you've got a box there named ‘Thomas Jefferson.' Spell ‘Thomas Jefferson' for the jury."

"I always spelled it "T-o-m J-e-i-ff,'" said the negro.

"You've got another brand named ‘George Washington.' Spell ‘George Washington'.

"J-o-e W-i-s-h-t-o-n," spelled the negro, verbally.

"In addition to these lists, you have written orders for Mr. Frank to take money out of your wages when you borrowed it, haven't you?"
"I wrote the notes to borrow the money. I didn't say anything about taking it out of my wages."

"You wrote these notes before April 26?"

"What would you say in some of these orders?"

"I'd write please let me have 50 cents or 75 cents—or whatever I wanted."

WASN'T HIDING.

"And you wouldn't say take it out of your wages?"
"No, sir."

"Weren't there some big boxes in the room where Schiff caught you hiding, the Monday after the murder?"
"I wasn't hiding," said the negro, "and there wasn't any big boxes there." The witness indicated some books in court as being about the size of the largest boxes in the room where he is supposed to have been hiding.

"You said that Darley and Campbell and the shipping clerk and a colored boy could have heard your talk with Schiff."

"Yes, sir, I think they could."

"When you went in the office, you say Mr. Frank asked you if you could write, and you said ‘I can write a little?'"

"Yes, sir, that's what he said."

"Well, if you had been writing for him a year, why did he have to ask you if you could write?"

"I don't know, sir."

"Mr. Hooper and Mr. Dorsey were with you in another place beside the station house and Mr. Dorsey's office, weren't they?"
"I don't know, sir."

"When was that?"
"I disremember."

DESCRIBES POCKETBOOK.

Mr. Dorsey took up the witness again.

"Jim, describe that pocketbook," said the solicitor.

"It was wire-ish looking pocketbook, like the ladies carry, light colored, and had little chains on it, for the ladies to hold to."

"Jim, didn't you have anything to copy the names of those boxes from?"
"No, sir."

"Well, the boxers were there, with the names on them where you could see them."

"Yes, sir."

"Why did you do this writing?"
"For Mr. Frank, so as to tell him what boxes was needed, and how many."
Mr. Rosser took him again.

"Didn't Schiff have charge of the boxes?"
"Yes, sir."

CONLEY EXCUSED.

"Tell me how large that pocketbook was."

"I couldn't tell—I saw it ther[e] on the table."

Urged by Mr. Rosser, he indicated about five inches as the length of the pocketbook. He wouldn't say how wide it was. He didn't know.

Conley was excused from the stand at this juncture, at 11:10 o'clock.

As Conley passed the state's table, Mr. Hooper gave him half of a plug of tobacco, which the negro received gratefully. As he left the court room, the negro told the deputy sheriff in charge of him that he was feeling all right. He asked for a cigarette, which one

of the newspaper men gave to him. Then he sat in the press room for a few minutes with the deputy, and read the newspapers and smoked.

A short recess was taken by the court.

When court resumed, Solicitor Dorsey offered in evidence the flashlight photograph of the scene where Mary Phagan's body was found.

A blank yellow order book containing leaves similar to one on which one of the notes was written, the scratchpad from which Conley says Frank tore the sheets that he wrote on; and the notes that Conley says he wrote, and which were found by the side of the body, were entered in evidence by the state without objection on the part of the defense. The two notes were read to the jury by Solicitor Dorsey.

DALTON CALLED.

C. B. Dalton was called to the witness stand. Attorney Rosser held a whispered consultation with the judge, and Solicitor Dorsey joined them, and it was decided not to hear Dalton's testimony until after the judge had decided finally whether or not he would rule out the portions of Conley's testimony which the defense seeks to strike from the records. It was understood that should the judge finally rule against the state, the solicitor would attempt anyway to get Dalton's testimony before the jury, and Mr. Rosser is expected to object.

At the end of this conference, Dalton was excused from the stand and returned to the witness room on the floor above.

Mrs. Arthur White was called as the next witness.

James Conley was brought into the room once more, from the ante-room where he had been taken, and confronted Mrs. White.

"Mrs. White, look at this man," said the solicitor. "Can you state who he is?"
"Yes, sir."

"Did you ever see him before?"
"Yes, sir."

"Where?"
"At police headquarters."

MRS. WHITE NOT POSITIVE.

"Did you ever see him before that time, at police headquarters?"
"I won't say positively."

"How does he compare with the man you say you saw sitting on the box on the first floor?"
Attorney Rosser objected to the question as a leading. Judge Roan allowed it after its construction had been changed slightly by the solicitor.

Conley was told to put on his hat, and after he had done so Mrs. White replied that he looked more like the negro whom she saw beside the elevator in the factory, than anyone whom she had seen since.

"How long after April 26 was it when you saw this man at police headquarters?"

"It was about a month afterward, I guess."

"Now, tell the jury what happened at the police station."

ROSSER IS SUSTAINED.

Attorney Rosser objected on the ground that his client was not bound by anything that happened at the police station, inasmuch as he was not represented there. Solicitor Dorsey replied, "Well, Mr. Scott, the Pinkerton detective, was present as your representative." Attorney Rosser exclaimed, "Mr. Scott does not represent this man," pointing to Frank. Judge Roan sustained the objection of Mr. Rosser.

"Now, your honor, I want to show why Mrs. White says this man looks more like him than any other," said the solicitor.

Attorney Rosser objected on the ground that the negro was not dressed in court as he was then. Judge Roan sustained Mr. Rosser.

"Describe to the jury now the man you saw was dressed," said the solicitor.

"He was just about the size of this man, and he looked black to me. He was sitting in a dark place, but I think he had on dark clothes. I don't know whether he was bareheaded or not."

"Mrs. White, Wade Campbell is your brother, and Arthur White is your husband. They are both connected with the pencil factory. When did you first tell them about seeing this negro?"
Attorney Rosser objected, and Judge Roan asked the solicitor how he considered that material. The solicitor explained, "We want to show that she told this to her husband and her brother within two days and we want to show that the detectives at the police station didn't get this information until later than that."

REASON FOR QUESTION.

Mr. Rosser renewed his objection, and Solicitor Dorsey argued again. "It is already in evidence to show that Detective Scott was told about this by Frank two days after the body was found. Now I want to show that the city detectives did not know about it until the 7th of May."

Mr. Dorsey called for the record of Scott's testimony. He knew he was right, said he.
"If you are, it's the first time you've been right about anything," said Mr. Rosser.

"Yes, and I want the record and I want to show that on Monday, April 28, Leo M. Frank knew that Mrs. White said there was a negro by the elevator, and that it took the detectives working for the state of Georgia until May 7 to find it out. By that I mean the detectives working for the state—not the detectives working for the National Pencil company."

The lawyers wrangled for several moments. The court stenographer entered and handed a typewritten manuscript to Attorney Arnold.

DORSEY IS APPLAUDED.

"Here, I want it," said Mr. Dorsey. "I'll give it to you in a minute," said Mr. Arnold. Attorney Rosser looked over the record, and finally he said, "Yes, you're right about it. It's in here."

Applause broke out in three parts of the court room. The applauders were ejected quickly from the court.

Mr. Rosser arose to argue, then, that the matter was immaterial. It didn't matter when the state learned ab[o]ut it, said he.

Solicitor Dorsey contended that he had a right to show that City Detective Rosser and the other detectives didn't know about it until May 7.

Judge Roan ruled that he could ask the witness when she next told about seeing the negro.

Mrs. White said she was not positive, but thought she next told it on May 7.

Mr. Rosser cross-examined the witness.

"You never declined to tell anyone about this, did you?"
"No, sir."

"Nobody ever asked you to keep it a secret, did they?"
"No, sir."

MANGUM IS CALLED.

When you spoke to Wade Campbell, didn't you tell him you saw the negro as you went up?"

"No, he is mistaken if he says that I did."

"Did you say the first time that you heard voices on the steps?"
"I might have said that the first time I went into the factory I heard voices, but I didn't see anyone."

Sheriff C. W. Mangum was sworn as the next witness.

"Were you present at the jail when Conley went down there from the factory?"

"Yes, he was with another party."

"You were present and overheard a conversation about having Conley confront Frank?"

DORSEY WINS POINT.

Attorney Rosser objected to this as irrelevant, and hearsay. In arguing it, Mr. Dorsey said: "Your honor, never in the history of the white race has a white man charged with so foul a crime by a negro refused to meet his accuser face to face. We want to show that this defendant refused to meet this ignorant negro who was making the charge against him."

Mr. Rosser interrupted several times, Judge Roan conceding that Mr. Dorsey could argue the point. Judge Roan ruled in favor of the state, and the question was repeated.

The witness said he was present.

"Go ahead and tell about it."

Sheriff Mangum said that Chief Beavers, Chief Lanford, Pinkerton Detectve Scott and Jim Conley, the negro, came to the jail together. There were two or three of Frank's friends at the door on the landing just in front of the cell. The officers didn't want to stop there because they did not care for these friends of the accused to see them. Chief Beavers asked the sheriff if they, the incoming party, could see Frank, stating that they wanted Conley to confront Frank and tell his story.

FRANK REFUSED AUDIENCE.

"I went to Mr. Frank and told him what Chief Beavers requested. I told him he could see them if he wanted to. He refused, saying that his attorney was not there and there was nobody to listen to what might be said."

Mr. Rosser: "Frank evidently knew them?"
"Yes, sir," replied the sheriff.

Solicitor Dorsey: "How do you know whether Frank knew them or not?"

"Well, I had seen in the papers where he had been over to police station and where he had talked with them."

The solicitor moved to order testimony on that point out of the records, and the court ruled it out.

Sheriff Mangum was excused. The solicitor called for Mrs. J. W. Coleman, mother of Mary Phagan. She did not answer, and the solicitor called for George Epps, the newsboy. He did not answer. The solicitor then made a statement to the court.

JURY SENT OUT.

"Your honor, we have two propositions which we wish to submit," said the solicitor, "but in doing so we must put up Epps and Dalton. I know the defense will object to this testimony. It is connected with some that is already in the record and to which they have objected.

"I would like to suggest that inasmuch as this prospective testimony has a direct bearing on the subject matter at issue, you now decide as to the admissibility of that evidence.

"Your honor, the state has only one other witness besides these. He is Dr. H. F. Harris, and we cannot get him here before 2 p. m."

Judge Roan ordered the jury out.

"I want you lawyers now to give me the law," said Judge Roan to counsel. "Read the law to me without too much discussion."

Solicitor Dorsey addressed the court.

"I have three propositions to argue. In the first place, we don't want any evidence ruled out with relation to Frank's previous customs or his connections with Conley.

"Second, we want to put up witnesses to corroborate Conley's testimony.

FRANK PINCHED MARY?

"And third, we want to put up George Epps to testify that on the day Mary Phagan was murdered, as she was on the way to the

pencil factory, she told Epps that Frank had pinched her and teased her and that she was afraid of him."

Judge Roan said: "Now let me hear the law on this without too much argument."

"I don't suppose there is any authority needed," said he, "in arguing the admissibility of George Epps' testimony. I don't suppose there is a court in the world that would want to hear any authority on that. It's plain, hearsay evidence." Mr. Arnold read an excerpt from some decision, however, tending to support his objection to the admissibility of that evidence."

He argued the second proposition stated by Solicitor Dorsey.

"There is nothing relevant to this case in the negro watching for Frank on previous occasions. Your honor conrelated to the issue. Your honor concedes its inference." Mr. Arnold cited a number of authorities to support his argument on this matter.

"I shouldn't argue the original admissibility of this evidence, because Mr. Hooper agreed with me yesterday that it was illegal testimony."

HOOPER INTERRUPTS.

Mr. Hooper interrupted. "The defense keeps insisting that I agreed yesterday that this shouldn't have been entered. I want to make myself clear on the subject. I was misunderstood. I said that their objection to the admissibility of this evidence might have been well taken if it had been entered at the time that the testimony was admitted. But I did not commit myself at all."

Attorney Arnold proceeded, characterizing the state's position as a bold attempt to prove that the negro watched for Frank on other occasions. The failure to object at the time of the introduction did not mean that they could not later move to have it stricken from the record. He cited a number of decisions from courts in other states, sustaining judges who had stricken evidence after it was admitted and in some cases after the witnesses had been cross-questioned about it.

He said that the defense had been unable to find a case in Georgia where the testimony was stricken after a witness had been cross examined. He supposed this was the first case in the state where that point had arisen, said he.

ARNOLD ARGUES FROM CHAIR.

Attorney Arnold paused. "I'm so hot and faint I feel unable to go much longer." He did not appear to be very faint. He sat down and asked for a glass of water. "Well, that's all right," said Judge Roan, "you can just remain in your seat and proceed."

"That's all right," said Mr. Arnold, "If I am permitted to sit down, I can go on all right."

Mr. Arnold continued his citation of authorities. He concluded with specific reading of a number of authorities which declared that it was always order for the judge, even on his own motion, to withdraw illegal and irrelevant testimony.

Solicitor Dorsey resumed. He stated that he wanted to speak about the failure of the defendant to ask that this evidence be stricken in time. "I could easily see," said he, "that if Conley's evidence goes without corroboration, it will be beneficial to the defendant. Now it is the law that you can put questions to tell of the witness' relations with the accused, social or otherwise. And that is exactly what Conley did.

IMPORTANT POINT.

"The defendant on cross-examination, even went into Conley's relations with others in the factory, and I didn't object because they had that right. Now, I say that this is a material and a powerful fact illustrating the probability of Conley's story. I saw, second, that they went into detail on it and drew it out, and now they haven't the right to throw it overboard."

Mr. Arnold interrupted to say that he had some other authorities which he had forgotten to read and which he should read before t[h]e solicitor finished. He then read excerpts from text books on criminal law.

Mr. Dorsey concluded his argument. The solicitor produced a number of decisions to support his contention. He contended that the evidence was admissible as an original proposition. Judge Roan interrupted him with a question indicating that he judge thought the question was one affecting the character of the defendant. The solicitor promptly declared that it was not, that it had a very important bearing on the bearing and conduct of the accused in relation with the witness, and was connected directly with the case.

Judge Roan interrupted again. "Mr. Dorsey, you understand this is a vital question in the case, concerning the proper administration of the law. I desire to do the right thing with fairness to all parties."

DORSEY FEARS NONE.

"Your honor, if I convict this man I want to hold him," said the solicitor. "I'm not afraid of the higher court reversing your honor on that proposition, if you are." Judge Roan said that he was not thinking about that at all.

The solicitor contended that the defense had slept over its rights in letting the evidence, even if it was inadmissible, get into the records without objection; that they had cross-examined the witness on portions of it for hours.

"And, now, when they find something they don't want, they are trying to get rid of it," said he. "They had a right to, and did sift Conley to bring out the relationship existing between him and Frank. This evidence, your honor, established the fact that Frank had full confidence in Conley and was willing to trust him as a lookout for him on such occasions."

Judge Roan announced an adjournment at this point until 2 o'clock.